

CIVIL REVISION APPLICATION NO. 851 OF 1987.

Date of decision: 10.2.1997

For approval and signature

The Honourable Mr. Justice R. R. Jain

Ms. Sejal K. Mandavia, advocate for the petitioner.

Mr. M.N. Popat, advocate for respondent.

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Coram: R.R.Jain,J.

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February 10, 1997.

Oral judgment:

Petitioner/plaintiff, which is a registered partnership firm, filed Regular Civil Suit No.86 of 1986 in the Court of Civil Judge (J.D.) at Junagadh, for monetary decree. It appears that till the evidence of plaintiff was over the registration certificate, i.e., extract from the Register of Firms, was not produced. However, when the same was found, a copy was produced vide Ex.28. The court permitted production of the document on condition of payment of cost and on condition of production of

original. While allowing production it was also observed that so far as question of exhibiting the document is concerned, would be considered after production of original. It is in this background that the petitioner/plaintiff produced original document along with application Ex.29 with a further request to recall the plaintiff's witnesses to prove the document. The application Ex.29 was rejected. Aggrieved by the said order, the petitioner/plaintiff has preferred this revision application.

It is true that parties to the suit are required to produce all the documents before settlement of issues as provided under Order 13 Rule 1 of the Civil Procedure Code. But, at the same time, there is no bar that if a party misses that stage, production cannot be allowed at a later stage. To take care of such contingency, provisions are made in Rule 2 Order 13 of the Code that on showing good cause to the satisfaction of court for non-production thereof before framing of issues, the court may permit production after recording reasons. In this case vide order passed below Ex.28 the court below for the reasons recorded, allowed production of documents at a belated stage. It appears that the court was also satisfied about the reasons for non-production at the stage of framing issues.

In a proceeding, mere production of a document is not sufficient because unless the document is proved in accordance with rules of evidence the same cannot be received and read in evidence by the court of law to appreciate the rival contentions. A document has to be proved and in order to prove the document, oral evidence has to be adduced. In this case, the petitioner requested the court to recall witness for proving the document which has been permitted to be produced after the evidence was over. Thus, having permitted the production, it will not be in the interest of justice not to give opportunity for proving the same. The denial amounts to depriving a party of its valuable right to adduce evidence and prove document according to law.

Once a document is permitted to be produced at a later stage, the parties are relegated to the position as if the document is produced at the initial stage as required under law. If this is so the parties cannot be deprived of their valuable rights of proving such document by oral evidence. In this case, as the evidence of plaintiff is already over consequently, the document can be proved only by recalling the witness and leading additional

evidence. Of course, this right is subject to one restriction that party recalling the witness cannot be permitted to introduce new case with a view to fill up lacuna. On witness being recalled the evidence to be led has to be restricted to the relevancy and proof of such document produced at later stage.

The ultimate aim of courts of law is to do substantial justice to the parties and procedural rules should not come in way. Procedure is always meant for discipline and systematic proceeding. If for some reason beyond control, the procedure could not be followed as required under law, the party should not be deprived of legitimate legal rights. Procedural irregularity can be cured by exercising inherent powers for doing substantial justice if the same does not cause any prejudice to other side.

In this case, while allowing production the court below had in its mind the stage of exhibiting the document therefore, rightly observed that the question of exhibiting document will be decided after production of the original document. Now having produced the original document the court below has not afforded opportunity to the party to get the document exhibited by adducing oral evidence. Thus, in my view, the impugned order runs quite counter to the order passed below Ex.28 by the same court in connection with same subject matter. Thus, the court below has taken a patently erroneous view in not recalling the witness for proving of such document.

In all cases, where documents are permitted to be produced at a later stage it may not be always necessary for recalling witness if the witness is to be recalled only for the purpose of proving and exhibiting the document. On facts, the stage may be dispensed with by exhibiting a document if it is a certified copy of a public document contemplated under Section 74 of the Indian Evidence Act because as provided under Section 77 of the Indian Evidence Act such certified copy may be produced in proof of the contents of public documents or parts of public documents of which they purport to be copies. It will depend upon the facts and circumstances of individual case.

In the result, the application deserves to be allowed. The impugned order passed below Ex.29 in Regular Civil Suit No. 86 of 1986 is hereby quashed and set aside. The petitioner/plaintiff is permitted to recall witness and adduce additional evidence only to the extent of proving the document permitted to be produced vide order passed below Ex.28. Rule is made absolute. No order as

to costs.